IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 310 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN WD/O. SOMABHAI MADHABHAI - Appellant(s)
Versus
KALAYANJI PANAJI PARMAR - Defendant(s)

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Appearance :
MR ZA SHAIKH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2006

ORAL JUDGMENT

By way of this appeal, the appellant herein original defendant (hereinafter referred to as “the defendant”) has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 26-11-1987 in decreeing Civil Suit No.544 of

1983 directing the defendant to execute sale deed in respect of the suit property i.e. decreed the suit for specific performance of the agreement to sell at Exh-27.

2. The plaintiff filed the aforesaid civil suit against the defendant for specific performance of the contract/ Banakhat entered into between the plaintiff and the defendant. It was averred in the plaint that defendant was the owner of three storeyed property bearing survey No.538 and M.C. No.231/8 situated in Shahpur ward II at Ahmedabad. He executed the the Banakhat on 8-7-1980 in favour of the plaintiff for the sale of the aforesaid property for a consideration of Rs.17,000/-. It was further averred that at the time of executing the Banakhat, a sum of Rs.10,000/- was paid to the defendant which was to be duly adjusted towards the consideration of Rs.17,000/- at the time of executing the sale deed in his favour in respect of the suit property. It was further averred that defendant had taken a loan of Rs.5,000/- from Mazzor Cooperative Bank Ltd. against mortgage of the suit property and he had undertaken to clear the property from the mortgage and thereafter to obtain the title clearance certificate from the solicitors. That thereafter, the defendant obtained payment of Rs.5000/- on 17-12-1980 from the plaintiff and at the same time handed over possession of the second floor of the suit building to the plaintiff and had agreed and undertaken to hand over the possession of the ground and first

floor at the time of executing the sale deed in favour of the plaintiff. Thus, it was submitted that in all, a sum of Rs.15000/- was paid towards the sale consideration. It was submitted that he was always ready and willing to pay the balance amount of consideration and obtain the sale deed in his favour but the defendant has not executed the sale deed and therefore, the suit notice was served which was not complied with and therefore, the aforesaid suit came to be filed. The suit was resisted by the defendant by filing written statement at Exh-10. It was contended on behalf of the defendant that the amount of Rs.15000/- was paid by way of advance rent and the second floor was given to the plaintiff as a tenant and therefore, it was requested to dismiss the suit.

3. The learned trial Court raised the issue and after considering the documentary as well as oral evidence negatived the contention on behalf of the defendant that Rs.15000/- was paid by way of advance rent and that second floor was given to the plaintiff as a tenant. The learned trial Court on appreciation of evidence held that Rs.15000/- was paid to the defendant as part of the consideration and Rs.10,000/- was paid at the time of execution of the agreement to sell at Exh-27 and that the plaintiff was always ready and willing to perform his part of payment of the balance amount of Rs.17000/- and accordingly decreed the suit for specific performance and directed the defendant to execute the sale deed

with regard to the property in question. Being aggrieved and dissatisfied with the same, the defendant has preferred the present appeal.

4. Agreement to sell is on record at Exh-27. Rs.10000/- was paid at the time of execution of the agreement to sell on 8-7-1980 and a further sum of Rs.5000/- was paid by the plaintiff on 17-12-1980 at the time of handing over the possession of the second floor and the plaintiff was put in possession of the second floor of the suit property by the defendant. Even at that time also, the defendant executed on writing. On appreciation of evidence and considering the huge amount of Rs.15,000/-, the learned trial Court rightly negatived the contention on behalf of the defendant that the payment of Rs.15000/- was made by way of advance rent. Considering the fact that the plaintiff was ready and willing to pay the balance amount and to perform his part, the learned trial Court has rightly decreed the suit. It is required to be noted that in spite of Banakhat at Exh-27 and subsequent writing which was in the signature of the defendant, the defendant had gone to the extent of denying the execution of any agreement to sell. Considering the fact that out of Rs.17000/-, Rs.15000/- was paid and the possession of the second floor was handed over to the plaintiff on 17-12-1980, the learned trial Court has rightly decreed the suit for specific performance and directed the defendant to execute the sale deed

with regard to the property in question. On going through the entire judgment, record and the reasoning, it cannot be said that the learned trial Court has committed any error. This Court is in complete agreement with the reasoning and finding of the learned trial Court while decreeing the suit.

5. For the reasons as stated above, the appeal fails and the same is dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

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